THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.11890 of 2005

Dated: 15th September, 2006.

Between :

T. Ramesh .. Petitioner

And

1. The Joint Collector & EO. ED.,
   A.P. State Civil Supplies Corporation
   Limited, Medak, Sangareddy.,
   And 4 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.11890 of 2005

ORDER:

The first respondent, Andhra Pradesh State Civil Supplies Corporation Ltd., Medak, issued tender notice inviting tenders for transportation of essential commodities under Stage II from Gajwel MLS to doorsteps of Fair Price Shop dealers attached to the MLS Point for the year 2005-2007. Having participated in the said tenders, the petitioner was declared as the successful tenderer. Accordingly, vide proceedings of the first respondent dated 27-04-2005, the petitioner was appointed as Stage II contractor at the following rates:-

Upto 8 Kms .....Rs.2.20 ps per qtl.

Beyond 8 Kms.....Rs.0.10 ps per qtl.

In pursuance thereof, an agreement was entered into between the parties. A work order dated 29-04-2005 was also issued in favour of the petitioner and the petitioner has been transporting the essential commodities as per the terms and conditions agreed upon.

While so, the petitioner came to know that the fifth respondent herein was also permitted by the first respondent-Corporation to transport essential commodities under Stage II from Gajwel MLS to doorsteps of Fair Price Shop dealers attached to the MLS Point and an order dated 18-04-2005 to that effect was issued by the first respondent-Corporation.

Aggrieved by the said action of the first respondent-

Corporation, this writ petition is filed contending, *inter alia*, that the action of the Corporation in entrusting the transportation under Stage II from Gajwel MLS point which is covered by the work order issued in favour of the petitioner is arbitrary and illegal.

I have heard the learned counsel for both the parties and perused the material on record.

In the counter affidavit filed on behalf of the first respondent-Corporation, the fact that the fifth respondent was also permitted to transport the essential commodities under Stage II from Gajwel MLS point is not disputed. However, it is explained that the fifth respondent was an existing contractor under "Own Your Own Vehicle" scheme even by the date of the finalisation of the award of contract to the writ petitioner. It is further stated that the Corporation never guaranteed any volume of work to the petitioner either under the allotment order or under the agreement executed in his favour. Hence the petitioner cannot claim any right to entrust the works under Stage II from Gajwel MLS point exclusively to him.

For proper appreciation of the controversy involved, it is necessary to note some more facts.

Under self-employment scheme, the Government had advanced loans to the unemployed youth for purchasing transport vehicles. The fifth respondent was also one of the beneficiaries under the said scheme. Since there were large scale defaults committed by the loanees in repayment of the instalments, the Government evolved policy in the interest of the unemployed youth and decided to allot work of transportation of essential commodities to the unemployed youth (beneficiaries under the scheme) by using the vehicles purchased with the finance extended by the Government under the scheme so that the Government can

periodically deduct the amounts towards repayment of the loans out of the transportation charges payable to the loanees. The said policy was evolved by the Government as a welfare measure to protect the interest of the State as well as the loanees until the loans under the scheme are cleared. It appears that the loans were discharged and therefore the first respondent-Corporation directed the beneficiaries to enter into agreement duly paying security deposit of Rs.25,000/- and bank guarantee of Rs.75,000/-. However, the said beneficiaries made a representation dated 02-02-2005 requesting not to remove them as Stage II contractors since they were working under the beneficiary scheme introduced by the Government under self-employment scheme. Alleging that their request was not considered by the Corporation, 14 beneficiaries, including the fifth respondent herein, filed W.P.No.4541 of 2005 seeking a direction to the Corporation to continue them as Stage II contractors and not to induct any third parties. The said writ petition was disposed of by this Court by order dated 09-03-2005 with a direction to the Corporation to consider the representations of the petitioners and pass appropriate orders in accordance with law within four weeks. Pursuant thereto, the Corporation having examined the matter, vide impugned proceedings dated 18-04-2005, permitted the fifth respondent herein to undertake transportation of essential commodities for Stage-II for a period of two years i.e., 2005-2007 with effect from
01-05-2005 to 30-04-2007.

The contention of the petitioner is that having invited tenders for awarding the contract to private parties and having awarded the contract in favour of the petitioner who is the successful bidder, the 1st respondent is not justified in permitting the 5th respondent also to

continue the transportation under the guise of Own Your Own Vehicles Scheme which has already worked itself out. It is also alleged that the 5th respondent was awarded the very same work on payment of higher charges which is not in the interest of the State Exchequer.

On the other hand, the learned Counsel appearing for the Corporation contended that the Corporation's right to appoint more than one contractor and to distribute the work among them is unfettered and therefore the writ petition is misconceived. The learned Counsel has also raised an objection as to the maintainability of the writ petition on the ground that the dispute arising out of non-statutory contract cannot be gone into under Article 226 of the Constitution of India.

The 5th respondent filed a separate counter-affidavit stating that he has been carrying on the transportation of essential commodities from the MLS Point, Gazwel to various fair price shops from the year 1991 and under the impugned order dated 18-4-2005 he was continued as Stage-II contractor under the beneficiary scheme for another two years. It is further stated that right from the year 1991 apart from the 5th respondent another person was also transporting from the same MLS point. Since the petitioner was not even awarded the contract by the date of the impugned proceedings i.e., 18-4-2005, the writ petition is misconceived and the petitioner has no locus standi to raise any dispute and on that ground alone the writ petition is liable to be dismissed.

It is clear from the material on record that the 5th respondent being one of the beneficiaries under "Own Your Own Vehicles" Scheme was entrusted the work of transportation of essential

commodities and the order of allotment in his favour was being extended from time to time. So far as the years 2005 and 2007 is concerned, such an order was passed on 18-4-2005. Admittedly, the petitioner was appointed as Stage-II Contractor much thereafter on 27-4-2005 and the work order was issued in his favour on 29-4-2005. The petitioner does not dispute the said fact.

It is also relevant to note that nowhere under the agreement or under the order of appointment, dated 27-4-2005, the petitioner was assured of any minimum quantity of work. On the other hand, under clause (6) of the agreement it is clearly stipulated that the Corporation does not guarantee any volume of work any time during the period of the agreement. The said clause (6) may be extracted hereunder :

> *"**VOLUME OF WORK :***
> *The Corporation does not guarantee any volume of work any time during the period of the agreement. The mere mention of the item of work in the agreement does not itself confer any right on the contractor to demand that the entire works should necessarily or exclusively be entrusted to him. The Corporation reserves the right to appoint one or more other contractors and distribute the work among them during the currency of this agreement as its unfettered discretion in any manner that it may decide and no claim for compensation shall lie against the Corporation by reason of such division of work. The decision of the Corporation in this matter shall be final and binding on the contractor."*

It is also clear from the counter-affidavits of the respondents that from the year 1991 onwards two contractors are transporting the essential commodities in the ratio of 50 : 50; one among them being the beneficiary under "Own Your Own Vehicles" Scheme.

Nothing has been placed before this Court by the petitioner contradicting the said specific plea of the respondents.

As noted above, since admittedly, the agreement in favour of the 5th respondent was extended for the years 2005 and 2007 on 18-4-2005 itself, the petitioner who had entered into agreement much thereafter with the respondent Corporation voluntarily cannot now raise a dispute with regard to the work allotted to the 5th respondent. Undoubtedly, he is bound by the terms and conditions of the agreement, dated 27-4-2005 particularly clause (6) under which it was made clear that the Corporation does not guarantee any volume of work during the period of the agreement. Since the Corporation has never assured the petitioner nor it was notified in the tender notice that certain quantity would be given for transportation, the contention of the petitioner that the terms and conditions of the tender in question were altered to the disadvantage of the tenderers is unfounded and without any substance.

For the aforesaid reasons, I am unable to hold that the action of the 1st respondent Corporation either arbitrary or illegal.

That apart, obviously the matter does not involve enforcement of any statutory right. The law is well settled that in a case of concluded contract voluntarily entered into between the parties where the terms and conditions are not regulated by any statute as such the obligations which arise out of such contract cannot be dealt with under Article 226 of the Constitution of India.

It cannot be said that the respondent Corporation had acted in breach of any statutory obligation and there is absolutely no allegation of mala fides. Hence, the interference by this Court is unwarranted.

Viewed from any angle, the Writ Petition is misconceived and the same is accordingly dismissed. No costs.

_____

G. ROHINI, J.

Dt. 15 –09-2006
USD